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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
MICHAEL WAYNE GAITHER,  
Defendant.

CR-07-00457-RMW

**STIPULATION AND [PROPOSED]  
ORDER EXCLUDING TIME FROM  
JULY 26, 2007 THROUGH AUGUST 20,  
2007 FROM CALCULATIONS UNDER  
THE SPEEDY TRIAL ACT (18 U.S.C. §  
3161)**

On July 26, 2007, defendant Michael Wayne Gaither made his initial appearance before Magistrate Judge Richard Seeborg. Assistant Federal Public Defender Nicholas Humy, Esq., appeared on behalf of the defendant. Assistant United States Attorney Richard Cheng appeared for the government. Magistrate Judge Seeborg ordered the parties to appear before this Court on August 20, 2007 at 9:00 a.m. for trial setting in this matter.

The parties request that the Court enter this order documenting the exclusion of time from calculations under the Speedy Trial Act, 18 U.S.C. § 3161, from July 26, 2007 through August 20, 2007. The parties, including the defendant, stipulate as follows:

1. The defendant understands and agrees to the exclusion of time from calculations under the Speedy Trial Act, 18 U.S.C. § 3161, from July 26, 2007 through August 20, 2007 based upon the need for the defense counsel to investigate further the facts of the present case. The government has provided 243 pages of discovery and defense counsel needs additional time to review the discovery, evaluate further possible defenses and motions available to the defendant.

2. The attorney for defendant joins in the request to exclude time under the Speedy Trial Act, 18 U.S.C. § 3161, for the above reasons, and believes the exclusion of time is necessary for effective preparation of the defense; believes the exclusion is in the defendant's best interests; and further agrees that the exclusion under the Speedy Trial Act, 18 U.S.C. § 3161, should be from July 26, 2007 through August 20, 2007.

Given these circumstances, the parties believe, and request that the Court find, that the ends of justice are served by excluding from calculations the period from July 26, 2007 through August 20, 2007, outweigh the best interests of the public and the defendant in a speedy trial under the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(A) & (B)(iv).

IT IS SO STIPULATED.

DATED: 8/7/07

/s/ Nicholas Humy  
NICHOLAS HUMY  
Assistant Federal Public Defender

DATED: 8/6/07

/s/ Hanley Chew  
HANLEY CHEW  
Assistant United States Attorney

### **[PROPOSED] ORDER**

Having considered the stipulation of the parties, the Court finds that: (1) the defendant understands and agrees to the exclusion of time from calculations under the Speedy Trial Act, 18 U.S.C. § 3161, from July 26, 2007 through August 20, 2007 based upon the need for the defense counsel to investigate further the facts of the present case, review the discovery that the

1 government has already provided and evaluate further possible defenses and motions available to  
2 the defendant; (2) the exclusion of time is necessary for effective preparation of the defense and  
3 is in the defendant's best interests; and (3) the ends of justice are served by excluding from  
4 calculations the period from July 26, 2007 through August 20, 2007.

5 Accordingly, the Court further orders that the time from July 26, 2007 through August  
6 20, 2007 is excluded from time calculations under the Speedy Trial Act, 18 U.S.C. § 3161.

7 IT IS SO ORDERED.  
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9 DATED: \_\_\_\_\_  
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11 THE HONORABLE RONALD M. WHYTE  
12 United States District Judge  
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